Page 1 of 2

# EXECUTIVE SUMMARY - ENFORCEMENT MATTER DOCKET NO.: 2007-0728-PST-E TCEQ ID: RN101765089 CASE NO.: 2659 RESPONDENT NAME: FKD ENTERPRISES INC. DBA LUCKY SEVEN FOOD MART

ORDER TYPE:		
1660 AGREED ORDER	FINDINGS AGREED ORDER	FINDINGS ORDER FOLLOWING SOAH HEARING
X FINDINGS DEFAULT ORDER	SHUTDOWN ORDER	IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
_AMENDED ORDER	EMERGENCY ORDER	·
CASE TYPE:		
AIR	MULTI-MEDIA (check all that apply)	INDUSTRIAL HAZARDOUS WASTE
PUBLIC WATER SUPPLY	X PETROLEUM STORAGE TANKS	OCCUPATIONAL CERTIFICATION
WATER QUALITY	SEWAGE SLUDGE	UNDERGROUND INJECTION CONTROL
MUNICIPAL SOLID WASTE	RADIOACTIVE WASTE	DRY CLEANER REGISTRATION
TYPE OF OPERATION: Convenience stor	ED: 5925 South Flores Street, San Antonio, Be with retail sales of gasoline	exar County
OTHER SIGNIFICANT MATTERS: Ther regarding this facility location.	e are no complaints. There is no record of add	
INTERESTED PARTIES: No one other tha	in the ED and the Respondent has expressed an	n interest in this matter.
COMMENTS RECEIVED: The Texas Reg	ister comment period expired on November 3,	2008. No comments were received.
Ms. Lena Robert TCEQ Enforcement Coordinator: TCEQ Regional Contact: Mr. Joel	Litigation Division, MC 175, (512) 239-0974 s, Litigation Division, MC 175, (512) 239-0019 Ms. Elvia Maske, Waste Enforcement Section Anderson, San Antonio Regional Office, MC I p. President, 3114 Waters View Drive, Sugar Lances 78742	, MC 149, (512) 239-0789 R-13, (210) 403-4010

Respondent's Attorney: Not represented by counsel on this enforcement matter.

### RESPONDENT NAME: FKD ENTERPRISES INC. DBA LUCKY SEVEN FOOD MART Page 2 of 2 **DOCKET NO.: 2007-0728-PST-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation:	Total Assessed: \$14,300	Corrective Action(s) Taken:
Complaint Routine _X Enforcement Follow-up Records Review	Total Deferred: \$0Expedited OrderFinancial Inability to PaySEP Conditional Offset	The Executive Director recognizes that the Respondent has implemented the following corrective measures:
Date of Complaints Relating to this Case: N/A	Total Due to General Revenue: \$14,300	1. Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006.
Date of Investigation Relating to this Case: February 8, 2007	This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.	2. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006.
Date of NOE Relating to this Case: February 22, 2007	Site Compliance History Classification:HighAverage _X_Poor	3. Began maintaining all UST records on February 13, 2007.
Background Facts: The EDPRP was filed and mailed on July 9, 2007. An EDFARP was filed and mailed on July 17, 2007. An EDSARP was filed and mailed on May 6, 2008. The EDTARP was filed on August 22, 2008, and mailed to	Person Compliance History Classification: High Average _X_ Poor  Major Source: Yes _X_ No	4. Stopped operating the Facility on June 28, 2007.
the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDTARP on August 25, 2008, as evidenced by the signature on the card. The Respondent has not filed an answer or requested a hearing.	Applicable Penalty Policy: September 2002	
Current Compliance Status:  The Respondent no longer owns or operates the facility.		
PST:  1. Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release [30 Tex. ADMIN. CODE § 334.50(b)(1)(A)].		
2. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request [30 Tex. ADMIN. CODE § 334.10(b)].		
3. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel [30 Tex. Admin. Code § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b.].		
4. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years [30 Tex. ADMIN. CODE § 334.49(c)(4)].	·	

#### Penalty Calculation Worksheet (PCW) Policy Revision 2 (September 2002) PCW Revision April 26, 2007 6-Mar-2007 Assigned Screening 26-Apr-2007 **EPA** Due PCW 8-May-2007 RESPONDENT/FACILITY INFORMATION Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart Reg. Ent. Ref. No. RN101765089 Major/Minor Source Minor Facility/Site Region 13-San Antonio CASE INFORMATION No. of Violations 4 Enf./Case ID No. 2659 Docket No. 2007-0728-PST-E Order Type Findings Media Program(s) Petroleum Storage Tank Enf. Coordinator Elvia Maske EC's Team EnforcementTeam 6 Multi-Media Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000 Penalty Calculation Section TOTAL BASE PENALTY (Sum of violation base penalties) \$11,000 ADJUSTMENTS (+/-) TO SUBTOTAL 1 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage 30% Enhancement \$3,300 Compliance History Enhancement for one 1660-styled order and for Poor Performer Notes Classification. \$0 0% Enhancement Culpability Νo The respondent does not meet the culpability criteria. Notes \$0 Good Faith Effort to Comply 0% Reduction Before NOV NOV to EDPRP/Settlement Offer Extraordinary Ordinary (mark with x) N/A The respondent does not meet the good faith criteria. Notes 0% Enhancement\* Subtotal 6 \$0 Total EB Amounts \$3,770 \*Capped at the Total EB \$ Amount Approx. Cost of Compliance SUM OF SUBTOTALS 1-7 Final Subtotal \$14,300 OTHER FACTORS AS JUSTICE MAY REQUIRE \$0 Adjustment Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30 Notes Final Penalty Amount \$14,300

No deferral is recommended for Findings Orders.

\$14,300

\$14,300

\$0

Final Assessed Penalty

Adjustment

Reduction

STATUTORY LIMIT ADJUSTMENT

Notes

**PAYABLE PENALTY** 

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20

Docket No. 2007-0728-PST-E

PCW

Respondent FKD Enterprises Inc. dba Lucky Seven Food Mart

Case ID No. 2659

Reg. Ent. Reference No. RN101765089

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Elvia Maske

Notes

Policy Revision 2 (September 2002) PCW Revision April 26, 2007

viimmeesty varianime	Compliance History Worksheet y Site Enhancement (Subtotal 2)			
	y Site Ennancement (Subtotal 2)  Number of	Enter N	umber H	ere Adjust
NOVs	Written NOVs with same or similar violations as those in the current enforcement a (number of NOVs meeting criteria)	ction	0	0%
	Other written NOVs		0	0%
	Any agreed final enforcement orders containing a denial of liability (number of o meeting criteria)	rders	1	20%
Orders	Any adjudicated final enforcement orders, agreed final enforcement orders without a confliability, or default orders of this state or the federal government, or any final prohimmergency orders issued by the commission		0	0%
Judgments	Any non-adjudicated final court judgments or consent decrees containing a denial of lis of this state or the federal government (number of judgements or consent decrees me criteria)		0	0%
and Consent Decrees	Any adjudicated final court judgments and default judgments, or non-adjudicated final judgments or consent decrees without a denial of liability, of this state or the fe government		0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	1,000	. 0	0%
Emissions	Chronic excessive emissions events (number of events)	Ni subs	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Tenvironmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (numbaudits for which notices were submitted)	1.000	0	0%
Addis	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Priv Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)		0	. 0%
		Please Ente	r Yes or	No
Varker High State (	Environmental management systems in place for one year or more		No	0%
Other	Voluntary on-site compliance assessments conducted by the executive director una special assistance program	der a	No	0%
Other	Participation in a voluntary pollution reduction program	Z/405-0	No	0%
	Early compliance with, or offer of a product that meets future state or federal govern environmental requirements	ment	No	0%
eat Violator (Su	SSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSSS	ent Perce	ntage	(Subtotal 2
No	1 Abd 4 (mids 4 mid 4 mid 5 mid 4 mid 6 mi	ent Perce	ntage	(Subtotal 3
pliance History	y Person Classification (Subtotal 7)			
Poor Per	· ·	ent Perce	ntage	(Subtotal 7
pliance History	y Summary			
Compliance History	Enhancement for one 1660-styled order and for Poor Performer Classific	ation.		

Total Adjustment Percentage (Subtotals 2, 3, & 7)

Screening Date 26-Apr-2007	Docket No. 2007-0728-PST-E	PCW
Respondent FKD Enterprises In	c. dba Lucky Seven Food Mart	Policy Revision 2 (September 2002)
Case ID No. 2659		PCW Revision April 26, 2007
Reg. Ent. Reference No. RN101765089	Taul	
Media [Statute] Petroleum Storage Enf. Coordinator Elvia Maske	Tank	
Violation Number 1		
Rule Cite(s)		
Kule Oite(3)	30 Tex. Admin. Code § 334.50(b)(1)(A)	
		11 (1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
Violetian Description exceed 35 days be	ISTs for releases at a frequency of at least once every m tween each monitoring). Specifically, during the investig lity did not monitor for releases during the months of Jun July 2006.	ation, it was
	Ba	ase Penalty \$10,000
>> Environmental, Property and Human Heal	th Matrix	
Н	arm	
Release Major Mod	derate Minor	
Potential x	Percent 25%	
		-
>>Programmatic Matrix Falsification Major Mor	derate Minor	
Falsification Major Mod	Percent 0%	1
<u> </u>		
	releases can result in the exposure of a significant amo ad levels that are protective of human health and the env	
	Adjustment	\$7,500
		\$2,500
Violation Events		
. Number of Violation Events	1 61 Number of violation d	ays
<b>和研究重新了学习</b> 实验的研究		,
daily monthly		
mark only one with an x semiannual annual single event	Violation Ba	ase Penalty \$2,500
School of discharge of the second of the sec		
One quarterly event is recom	mended from the violation beginning date of June 1, 200 compliance date of August 1, 2006.	o to the
Economic Benefit (EB) for this violation	Statutory Limit T	est .
Estimated EB Amount	\$105 Violation Final Pe	enalty Total \$3,250
	This violation Final Assessed Penalty (adjusted	d for limits) \$3,250

VIOIALIOITINO	Media Petroleum Storage Tank Violation No. 1						
				374		5.0	
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$						
nago na karyung syana nanahadi ji yanan nasu undanadi ili mud di bidan kali yahkad kalibidi.	ages remark to a parameter of parent although \$1550.	e de contrata de la contrata del contrata de la contrata del contrata de la contrata del la contrata de la contrata del la contrata de la con	n deple service materials and of second material process descriptions and the second	- The St. Frank and St. Frank and St.	National and a second	mang kanagan at pamanagan kanagan pamanagan anagan anagan anagan kanagan an	and the second of the second o
Delayed Costs	2164. KM 2250						
Equipment				0.0	\$0	\$0	\$0
Buildings	3 1 1 1 2 1 2 1 2		1	0.0	\$0	\$0	\$0
Other (as needed)		44.7 (4.1)	Same and the second	0.0	\$0	\$0	\$0
Engineering/construction		10.5441703004.004	. 72 * 10 08 04 10 · · ·	0.0	\$0	\$0	\$0
Land	<u> </u>	2 12 14 25 15 15 15 15 15 15 15 15 15 15 15 15 15		0.0	\$0	ii ii ii/a	\$0
Record Keeping System		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	and the second	0.0	\$0 \$0	n/a n/a	\$0 \$0
Training/Sampling Remediation/Disposal	1.3 1.3 m · · · · · · · · · · · · · · · · · ·			0.0	\$0	n/a	\$0 \$0
Permit Costs	7 7 7 7 7 7 7 7		. 7 40 41 1 4 12 4 12 4	0.0	\$0	n/a	\$0 \$0
							\$0
Other (as needed)  Notes for DELAYED costs				0.0	\$0		<b>30</b>
Notes for DELAYED costs	ANN	UALIZE [1] avoid	ed costs before (c			one-time avoided o	
	ANN	UALIZE [1] avoide	ed costs before e		item (except for	one-time avoided o	:osts) \$0
Notes for DELAYED costs  Avoided Costs	Section 1		red red alternation	entering 0.0 0.0	item (except for \$0 \$0	one-time avoided o	osts) \$0 \$0 \$0
Notes for DELAYED costs  Avoided Costs Disposal Personnel Inspection/Reporting/Sampling	\$600	UALIZE [1] avoid	ed costs before e	0.0 0.0 0.0	item (except for \$0 \$0 \$5 \$5	one-time avoided o	Costs) \$0 \$0 \$0 \$105
Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment	Section 1	1-Jun-2006	red red alternation	0.0 0.0 0.2	item (except-for \$0 \$0 \$5 \$5 \$5 \$0	one-time avoided of \$0 \$0 \$0 \$100 \$0 \$0	Sosts) \$0 \$0 \$0 \$105 \$0
Avoided Costs  Avoided Costs  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	Section 1		red red alternation	0.0 0.0 0.0 0.2 0.0		one-time avoided (	\$0 \$0 \$105 \$0 \$105
Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	Section 1	1-Jun-2006	red red alternation	0.0 0.0 0.0 0.2 0.0 0.0		one-time avoided of \$0 \$0 \$0 \$100 \$0 \$0	SO \$0 \$0 \$105 \$0 \$0 \$0 \$0
Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	Section 1	1-Jun-2006	red red alternation	0.0 0.0 0.0 0.2 0.0		one-time avoided (	Sosts) \$0 \$0 \$105 \$0 \$0 \$0
Notes for DELAYED costs  AVOIDED COSTS Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	\$600 Estimated c	1-Jun-2006	1-Aug-2006	0.0   0.0   0.0   0.2   0.0   0.0   0.0   0.0		one-time avoided of \$0 \$0 \$0 \$100 \$0 \$0	\$0 \$0 \$0 \$105 \$0 \$0 \$0 \$0

Screening Date		A transport of the control of the co	No. 2007-0728-PST-E	PCW-
Case ID No.	FKD Enterprises Inc. dba l 2659	Lucky Seven Food Mart		Policy Revision 2 (September 2002) PCW Revision April 26, 2007
Reg. Ent. Reference No.				, <u> </u>
	Petroleum Storage Tank	•		
Enf. Coordinator	Elvia Maske			
Rule Cite(s)		30 Tex. Admin. Code §	334 10/b)	
		30 Text Admin. Code 9	304. (O(b)	
Violation Description			/stem and to provide those rec nented during the investigation 97.	
			Base I	Penalty \$10,000
>> Environmental, Property a		trix		
Release	Harm Major Moderate	Minor		
OR Actual		· 在自己的 (1911年)	-	
Potential			Percent 0%	
>>Programmatic Matrix				
Falsification	Major Moderate	Minor	Percent 10%	<i>,</i>
		Rose sales of second	·	· ·
Matrix Notes	Failure to comp	ly with 100% of the rule r	equirement.	
			Adjustment	\$9,000
				\$1,000
Violation Events				
Number of Viol	ation Events	5	Number of violation days	
10	daily	- <del> </del>	·	•
	monthly			
mark only one with an x	quarterly: semiannual		Violation Base F	Penalty \$1,000
	annual			
	single event x		*.	•
One single ev	ent is recommended hase	d on the documentation of	of the violation during the Febr	Jary 8
		2007 investigation.		
Economic Benefit (EB) for this	s violation		Statutory Limit Test	
Estimated	EB Amount	\$0	Violation Final Penalt	y Total \$1,300
			sessed Penalty (adjusted for	

Item Cost   Date Required   Final Date   Yrs   Interest Saved   Onetime Costs   EB Amount	Case ID No	:	es Inc. dba Lucky S	seven Food Mart				
Notes for DELAYED costs   De	CHANGE NO SERVICES IN TAKAND SILIT SERVICE SOLIT	.2	<b>-</b>					V
Item Cost   Date Required   Final Date   Yrs   Interest Saved   Onetime Costs   EB Amount	医囊膜切除性 医多种皮肤 医二甲二甲基甲基二甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲基甲	4	age rank				Percent Interest	Depreciation
Delayed Costs							5.0	15
Delayed Costs	Item Description	() - 1985년 중 1일 1일 시	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment Buildings	and a bookle come to be a bookle and the state of the sta	na transia ini na kata kata manakata ini ara manakata ini ata da manakata ini ata da manakata ini ata da manak Manakata manakata ini ata da m						
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Other (as needed)   Engineering/construction				The second second second				
Record Keeping System   S300   8-Feb-2007   13-Feb-2007   0.0   \$0   \$0   \$0   \$0   \$0   \$0   \$	_							
Land   \$300   8-Feb-2007   13-Feb-2007   0.0   \$0   \$0   \$0   \$0   \$0   \$0   \$			12.00 E 7.30					
Sampling		-		11 11 1400 15 11 1				
Training/Sampling Remediation/Disposal Permit Costs Other (as needed)  Notes for DELAYED costs  AVOIDED  AVOIDED  Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)  O.0 \$0 \$0 \$0 \$0 \$0  ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) So \$0 \$0 \$0 \$0  So \$0 \$0 \$0 \$0  So \$0 \$0 \$0  So \$0		\$300	8-Feb-2007	13-Feb-2007				
Remediation/Disposal Permit Costs Other (as needed)  Notes for DELAYED costs  AVOIGEd Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)  O.0 \$0 \$0 \$0 \$0 \$0  Estimated cost to maintain a record keeping system at the Facility. Date required is the investigation date and the final date is the date of compliance.  AVOIGED Costs  ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)  0.0 \$0 \$0 \$0  S0 \$0				5. A. 1. W. H. M. A.				
Permit Costs Other (as needed)  Notes for DELAYED costs  Estimated cost to maintain a record keeping system at the Facility. Date required is the investigation date and the final date is the date of compliance.  AVOICE COSTS  ANNUALIZE [1] avoided costs before entering item: (except for one-time avoided costs)  Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed)  DO SO S		40.05 (0.00)	The State of the second	Lin Colonia National Colonia	0.0	\$0	n/a - n/a	
Notes for DELAYED costs    Estimated cost to maintain a record keeping system at the Facility. Date required is the investigation date and the final date is the date of compliance.    Avoided Costs	•							
Notes for DELAYED costs  Estimated cost to maintain a record keeping system at the Facility. Date required is the investigation date and the final date is the date of compliance.  AVOIDED SO	Permit Costs		and the second of	Carry Star Fact Acc	0.0	\$0	k in he n/a secret	
Personnel		Estimated cos	st to maintain a rec	ord keening syste	0.0	\$0	n/a	\$0 \$0
Inspection/Reporting/Sampling   0.0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	Other (as needed)  Notes for DELAYED costs  Avoided Costs		UALIZE [1] avoid	the final date i	0.0 m at the s the dat ntering	\$0 Facility. Date recte of compliance.	quired is the investig	\$0 \$0 pation date and costs)
Supplies/equipment	Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal		UALIZE [1] avoid	the final date i	m at the s the dat	\$0 Facility. Date recte of compliance.  Item (except for \$0	quired is the investig one-time avoided	\$0 \$0 pation date and costs)
Financial Assurance [2] ONE-TIME avoided costs [3] Other (as needed) Other (as needed) Other (as needed)	Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal Personnel	ANN	UALIZE [1] avoid	the final date i	m at the sthe dat	\$0 Facility. Date recte of compliance.  Item (except for \$0 \$0	puired is the investig	\$0 \$0 gation date and costs) \$0
ONE-TIME avoided costs [3] Other (as needed) Other (as needed) Other (as needed)	Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal Personnel inspection/Reporting/Sampling	ANN	UALIZE [1] avoid	the final date i	m at the sthe dat  ntering  0.0  0.0  0.0	\$0  Facility. Date receive of compliance.  Item:(except for \$0 \$0 \$0	quired is the investigone-time avoided of \$0 \$0 \$0 \$0	\$0 \$0 pation date and costs) \$0 \$0 \$0
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	Other (as needed)  Notes for DELAYED costs  Avoided Costs  Disposal Personnel inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	ANN	UALIZE [1] avoid	the final date is	0.0 m at the sthe dat ntering 0.0 0.0 0.0 0.0 0.0	\$0 Facility. Date recte of compliance.  Item (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0	one-time avoided so	\$0 \$0 sation date and costs) \$0 \$0 \$0 \$0
Notes for AVOIDED costs	Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	ANN	UALIZE (1) avoid	the final date is	0.0 m at the sthe dat ntering 0.0 0.0 0.0 0.0 0.0	\$0 Facility. Date recte of compliance.  Item (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 sation date and costs) \$0 \$0 \$0 \$0 \$0
	Other (as needed)  Notes for DELAYED costs  AVOIDED COSTS  Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	ANN	UALIZE (1) avoid	the final date is	0.0 m at the sthe dat ntering 0.0 0.0 0.0 0.0 0.0	\$0 Facility. Date recte of compliance.  Item (except for \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0 \$0	one-time avoided of \$0 \$0 \$0 \$0 \$0 \$0 \$0	\$0 \$0 sation date and costs) \$0 \$0 \$0 \$0 \$0

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PCW	cket No. 2007-0728-PST-E	)7 <b>Doc</b>	ening Date 26-Apr-2007	Scre
Revision 2 (September 2002)	Mart Policy R	prises Inc. dba Lucky Seven Food		化环烷二甲甲二甲基酚甲基苯甲酚甲基甲基甲甲
PCW Revision April 26, 2007	P		Case ID No. 2659	
			ference No. RN101765089	
			lia [Statute] Petroleum Stor Coordinator Elvia Maske	
			ation Number 3	
	Agreed Order Docket No. 2002-1035-PST- n Nos. 2.a.i. and 2.b.	dmin. Code § 334.48(c) and TCEQ E, Ordering Provision		
	omatic inventory control procedures for all leum substances used as a motor fuel.			Violation
\$10,000	Base Penalty			
			, Property and Human H	>> Environmental
		<b>Harm</b> Moderate Minor	Release Major	
	Percent 25%		Actual x	OR
			Matrix	>>Programmatic I
,	Barrant [ and ]	Moderate Minor	Falsification Major	
	Percent 0%			
	esult in the exposure of a significant amount tive of human health and the environment.			Matrix Notes
<u> </u>		garandera eteroko interveturen barrolle dos ilide bisokordea.		
]	Adjustment \$7,500			
\$2,500	[			
Commence				/iolation Events
	668 Number of violation days	ts 2	Number of Violation Events	
			daily	
\$5,000	Violation Base Penalty		mark only one quarterly with an x semiannual	
	•		single event	•
	ate of the Agreed Order (June 27, 2005) to 1 26, 2007).	ecommended from the effective da the date of screening (April	Two annual events are reco	
10.1	Statutory Limit Test	o <b>n</b>	(EB) for this violation	conomic Benefit
\$6,500	Violation Final Penalty Total	nt \$2,572	Estimated EB Amount	
\$6,500	nal Assessed Penalty (adjusted for limits)	This violation Fina		・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・・
		2月5日2月二日本石里共产工年期五年	Sparife Table 1987	1.444.0046

Case ID No. Reg. Ent. Reference No.	FKD Enterprise 2659	conomic es Inc. dba Lucky S	تماثبنا بالساطانانيف فالمساأ فأغامه	orks)	sheet		
of the contract of the contrac	Petroleum Stor					Percent Interest	Years of Depreciation
2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2. 2						5.0	15
	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or \$	alidakinini		San			. Al Perila
	a sangga agag ga sagaga at ti			a constituent of the constituent	10.27 (10.58) 1.37 (10.58)		
Delayed Costs	75 34 Ville 11 - 17 5	1				30-48-50-14-14-17-17	Nobelie National And
Equipment				0.0	\$0 \$0	\$0 \$0	\$0 \$0
Buildings Other (as needed)				0.0	\$0 \$0	\$0	\$0 \$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	### Triple	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling			Travel track to the	0.0	\$0	n/a.	\$0
Remediation/Disposal	The second second		Regard to Love 1 to 19	0.0	\$0	2 a s a n/a di a	\$0
Permit Costs	100		345 C. F. V. W. C. C.	0.0	\$0	3.13. n/a.=1.13.	\$0
Other (as needed)	Fr. Physics authors		Tay to the	0.0	\$0	MANUS NO/assissas	\$0
		[대급 등 기계 기약 경취 30]	The second secon	in for the			grandjar dig 1997.
Notes for DELAYED costs  Avoided Costs	ANN	UALIZE [1] avoide	ed costs before			one-time avoided c	
Avoided Costs Disposal	4 4 5 7 5 6 1		3 1 To 3 4 447 1 10 3	0.0	\$0	\$0	\$0
Avoided Costs Disposal Personnel		UALIZE [1] avoide	ed costs before e	0.0 2.4	\$0 \$122	\$0 \$2,449	\$0 \$2,572
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling	4 4 5 7 5 6 1		3 1 To 3 4 447 1 10 3	0.0 2.4 0.0	\$0 \$122 \$0	\$0 \$2,449 \$0	\$0 \$2,572 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment	4 4 5 7 5 6 1		3 1 To 3 4 447 1 10 3	0.0 2.4 0.0 0.0	\$0 \$122 \$0 \$0	\$0 \$2,449 \$0 \$0	\$0 \$2,572 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	4 4 5 7 5 6 1		3 1 To 3 4 447 1 10 3	0.0 2.4 0.0 0.0	\$0 \$122 \$0 \$0 \$0	\$0 \$2,449 \$0 \$0 \$0	\$0 \$2,572 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	\$1,000	27-Jun-2005	8-Dec-2007	0.0 2.4 0.0 0.0 0.0	\$0 \$122 \$0 \$0 \$0 \$0	\$0 \$2,449 \$0 \$0 \$0	\$0 \$2,572 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	4 4 5 7 5 6 1		3 1 To 3 4 447 1 10 3	0.0 2.4 0.0 0.0	\$0 \$122 \$0 \$0 \$0	\$0 \$2,449 \$0 \$0 \$0	\$0 \$2,572 \$0 \$0
Avoided Costs Disposal Personnel Inspection/Reporting/Sampling Supplies/equipment Financial Assurance [2]	\$1,000	27-Jun-2005	8-Dec-2007	0.0 2.4 0.0 0.0 0.0 0.0 0.0	\$0 \$122 \$0 \$0 \$0 \$0 \$0	\$0 \$2,449 \$0 \$0 \$0 \$0 \$0	\$0 \$2,572 \$0 \$0 \$0 \$0 \$0
Avoided Costs Disposal Personnel Inspection/ReportIng/Sampling Supplies/equipment Financial Assurance [2] ONE-TIME avoided costs [3]	\$1,000	27-Jun-2005	8-Dec-2007	0.0 2.4 0.0 0.0 0.0 0.0 0.0	\$0 \$122 \$0 \$0 \$0 \$0 \$0	\$0 \$2,449 \$0 \$0 \$0 \$0 \$0	\$0 \$2,572 \$0 \$0 \$0 \$0 \$0

Screen	ing Date 26-Apr-2007	Docke	t No. 2007-0728-PST-E	PCW
	pondent FKD Enterprises Inc.	dba Lucky Seven Food Mar	t	Policy Revision 2 (September 2002)
	se ID No. 2659			PCW Revision April 26, 2007
	ence No. RN101765089			
	[ <b>Statute</b> ] Petroleum Storage T	ank		
and the second of the second o	rdinator Elvia Maske			
	n Number 4			
R	ule Cite(s)	30 Tex. Admin. Code §	334.49(c)(4)	일 시험에 (A) <u>11일 (A) (A)</u>
. •				
Violation D	escription adequacy of protect	ion at a frequency of at leas	spected and tested for operat t once every three years. Spe e test due date of August 31, 2	cifically,
			Base	Penalty \$10,000
>> Environmental. P	roperty and Human Health	n Matrix		
	Har	m	The College of the Co	
	Release Major Mode	rate Minor		
OR	Actual		Percent 25%	
	Potential x		reiteilt 25%	
>>Programmatic Ma	riix			
	alsification Major Mode	rate Minor	X - 200 P - 2	
			Percent 0%	
Matrix Notes	luman health or the environment exceed levels that are p		cant amounts of pollutants whi nd environmental receptors. Adjustment	\$7,500
				\$2,500
Violation Events				
Nui	mber of Violation Events	34	Number of violation day	s
	daily monthly quarterly semiannual single event x		Violation Base	Penalty \$2,500
,	2019lo-eventil X			
· []	One single event is recommende	d based on documentation of 2007 investigation.	of the violation during the Febr	uary 8,
Economic Benefit (E	B) for this violation		Statutory Limit Tes	<b>t</b>
	Estimated EB Amount	\$1,093	Violation Final Pena	alty Total \$3,250
		This violation Final A	ssessed Penalty (adjusted fo	or limits) \$3,250

Respondent Case ID No. Reg. Ent. Reference No.	FKD Enterprise 2659	conomic es Inc. dba Lucky S	en etageneris Maria de la traca de la como	/orks	sneet		
	Petroleum Sto					Percent Interest	Years of Depreciation
						5.0	18
Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs		24. SKR. 252.					
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	The second		April 1995	0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a // ///	\$0
Record Keeping System			4 - 10 - 120 - 140	0.0	\$0	in a n/ausurut	\$0
Training/Sampling		441 8 9 1 1 2 2 1 2 3 4	3 1948 at 12 20 8	0.0	\$0	n/a i	\$0
Remediation/Disposal			4 - 2 1 A M. W. T.	0.0	\$0	n/a	\$0
Permit Costs Other (as needed)		The section of Grant		0.0	\$0 \$0	rus tan/a Na tag	\$0 \$0
Notes for DELAYED costs							
Avoided Costs	ANN	UALIZE [1] avoid	ed costs before e	ntering		one-time avoided c	
Disposal	Contract security	1 17 354 43	Artest to the window	0.0	\$0	\$0	\$0
Personnel	11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	and Sayone Asset	restored LESS CARLAGE	0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling		-11_0 -104_63601 #v	Assistance and sufficient	0.0	\$0	\$0	\$0
Supplies/equipment	11111111111111111		Harry Addition	0.0	\$0	\$0	\$0
Financial Assurance [2]	Paramatan (	・おける機能がありませんである。	general and property and a second	0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3] Other (as needed)	\$1,000	31-Aug-2005	7-Aug-2006	1.9	\$0 \$93	\$0 \$1,000	\$0 \$1,0934
Notes for AVOIDED costs			riennial test. The c	agedb	ired is the test du	e date and the final o	
	11 m. cardo field, companied and con-	etii 2012 (1941) (1954) (1954)	en en propiet de la				version of wall it is

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# **Compliance History**

Custome	r/Respondent/Owner-Operator:	CN600952915	FKD Enterprises Inc.	_	Classification: POOR	Rating: 90.00
Regulate	d Entity:	RN101765089	LUCKY SEVEN FOOD	MART	Classification: POOR	Site Rating: 90.00
ID Numb	er(s):	PETROLEUM S		REGISTE	RATION	44882
Location:		REGISTRATION 5925 S FLORES	ST, SAN ANTONIO, TX, 7	8214	Rating Date: 9/1/2006 Re	peat Violator: NO
TCEQ R	egion:	REGION 13 - SA	N ANTONIO			
Date Cor	npliance History Prepared:	May 08, 2007				
Agency [	Decision Requiring Compliance History:	Enforcement				
Compliar	nce Period:	May 08, 2002 to	May 08, 2007			
TCEQ St	aff Member to Contact for Additional Info		this Compliance History none: (512) 239-078	39		
		Site C	ompliance History Co	mponents		•
1. Has th	e site been in existence and/or operation	for the full five year	compliance period?	Yes		,
	ere been a (known) change in ownership	of the site during th	ne compliance period?	No N/A		
	who is the current owner? who was/were the prior owner(s)?	•		<del></del>		
			•	N/A		
	did the change(s) in ownership occur?			N/A		
Compo	nents (Multimedia) for the Site: Final Enforcement Orders, court judge	ments and someont	degrees of the state of Tox	ree and the fode	ral gavernment	
	30 TAC Ch Description: Failure to m  Classification: Moderate Citation: 30 TAC Ch Description: Failure to co Classification: Moderate Citation: 2C TWC Ci 30 TAC Ch 30 TAC Ch Description: Failure to re proper operation of the re inspected and tested onc Classification: Moderate Citation: 30 TAC Ch	hapter 20, SubChap apter 334, SubChap conitor for releases f apter 334, SubChap anduct effective inver- hapter 20, SubChap apter 334, SubChap apter 334, SubChap agularly inspect the operation of the sys- ice every three years apter 334, SubChap apter 334, SubChap apter 334, SubChap apter 334, SubChap apter 334, SubChap	oter C 334.50(b)(1)(A) from the UST system at lead oter C 334.48(c) entory control and reconcilia	ation on all USTs at least once ever re to have the ca	ery sixty days to ensure thodic protection system	
В.	Any criminal convictions of the state of N/A	Texas and the fede	ral government.			
C.	Chronic excessive emissions events.					
	N/A					
D.	The approval dates of investigations. (6 1 02/26/2007 (541782)	CCEDS Inv. Track. I	No.)			
E.	Written notices of violations (NOV). (Co	CEDS Inv. Track. No	o.)	•		
F.	Environmental audits.					• .

Type of environmental management systems (EMSs).

G.

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
FKD ENTERPRISES INC. DBA	§	
LUCKY SEVEN FOOD MART;	§	ENVIRONMENTAL QUALITY
RN101765089	§	•

#### DEFAULT ORDER DOCKET NO. 2007-0728-PST-E

At its	agenda, the Texas Commission on Environmental Quality
("Commission" or "TCEQ")	considered the Executive Director's Third Amended Report and
Petition filed pursuant to TEX	. WATER CODE chs. 7 and 26, and the rules of the TCEQ, which
requests appropriate relief, incl	luding the imposition of an administrative penalty. The respondent
made the subject of this Order	is FKD Enterprises Inc. dba Lucky Seven Food Mart ("FKD").

The Commission makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

- 1. FKD owns and operates a convenience store with retail sales of gasoline, located at 5925 South Flores Street, San Antonio, Bexar County, Texas (the "Facility").
- 2. FKD's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The USTs at the Facility contain regulated substances as defined in the Commission's rules.
- 3. On February 8, 2007, an investigator from the TCEQ San Antonio Regional Office documented that FKD:
  - a. Failed to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006;

- b. Failed to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request;
- c. Failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel; and
- d. Failed to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
- 4. FKD received notice of the violation on or about February 27, 2007.
- 5. The Executive Director recognizes that FKD has implemented the following corrective measures at the Facility in response to this enforcement action:
  - a. Implemented vapor monitoring as a release detection method for all USTs at the Facility on August 1, 2006;
  - b. Successfully conducted the required triennial testing of the corrosion protection system on August 7, 2006; and
  - c. Began maintaining all UST records on February 13, 2007.
  - d. Stopped operating the Facility as of June 28, 2007.
- 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDPRP") in the TCEQ Chief Clerk's office on July 9, 2007.
- 7. By letter dated July 9, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unable to forward." The first class mail has not been returned.
- 8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD

- Enterprises Inc. dba Lucky Seven Food Mart" (the "EDFARP") in the TCEQ Chief Clerk's office on July 17, 2007.
- 9. By letter dated July 17, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unable to forward." The first class mail has not been returned.
- 10. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDSARP") in the TCEQ Chief Clerk's office on May 6, 2008.
- 11. By letter dated May 6, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDSARP. According to the return receipt "green card", FKD received the EDSARP on June 23, 2008, as evidenced by the signature on the card.
- 12. The Executive Director filed the "Executive Director's Third Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDTARP") in the TCEQ Chief Clerk's office on August 22, 2008.
- 13. By letter dated August 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served FKD with notice of the EDTARP. According to the return receipt "green card", FKD received notice of the EDTARP on August 25, 2008, as evidenced by the signature on the card. The first class mail has not been returned, indicating that FKD received notice of the EDTARP.
- 14. More than 20 days have elapsed since FKD received notice of the EDSARP or the EDTARP, provided by the Executive Director. FKD failed to file an answer to either the EDSARP or the EDTARP, failed to request a hearing, and failed to schedule a settlement conference.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact Nos. 1 and 2, FKD is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.

- 2. As evidenced by Finding of Fact No. 3.a., FKD violated 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), by failing to monitor the UST system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release. The Facility did not monitor for releases during the months of June 2006 and July 2006.
- 3. As evidenced by Finding of Fact No. 3.b., FKD violated 30 TEX. ADMIN. CODE § 334.10(b), by failing to maintain records pertaining to the UST system and to provide those records to Commission personnel upon request.
- 4. As evidenced by Finding of Fact No. 3.c., FKD violated 30 Tex. ADMIN. CODE § 334.48(c) and TCEQ Agreed Order Docket No. 2002-1035-PST-E, Section IV, Paragraphs 2.a.i. and 2.b., by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel.
- 5. As evidenced by Finding of Fact No. 3.d., FKD violated 30 Tex. ADMIN. CODE § 334.49(c)(4), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years. Specifically, triennial testing was not conducted by the test due date of August 31, 2005.
- 6. As evidenced by Finding of Fact Nos. 12 and 13, the Executive Director has timely served FKD with proper notice of the EDTARP, as required by Tex. WATER CODE § 7.055 and 30 Tex. ADMIN. CODE § 70.104(a).
- 7. As evidenced by Finding of Fact No. 14, FKD has failed to file a timely answer to the EDFARP, as required by Tex. Water Code § 7.056 and 30 Tex. Admin. Code § 70.105. Pursuant to Tex. Water Code § 7.057 and 30 Tex. Admin. Code § 70.106, the Commission may enter a Default Order against FKD and assess the penalty recommended by the Executive Director.
- 8. Pursuant to Tex. Water Code § 7.051, the Commission has the authority to assess an administrative penalty against FKD for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
- 9. An administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in Tex. Water Code § 7.053.

10. Tex. Water Code §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALTIY that:

1. FKD is assessed an administrative penalty in the amount of fourteen thousand three hundred dollars (\$14,300.00) for violations of Tex. Water Code chs. 7 and 26 and rules of the TCEQ. The payment of this administrative penalty and FKD's compliance with all the terms and conditions set forth in this Order completely resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: FKD Enterprises Inc. dba Lucky Seven Food Mart; Docket No. 2007-0728-PST-E" to:

Financial Administration Division, Revenues Section Attention: Cashier's Office, MC 214 Texas Commission on Environmental Quality P.O. Box 13088 Austin, Texas 78711-3088

- 2. All relief not expressly granted in this Order is denied.
- 3. The provisions of this Order shall apply to and be binding upon FKD.
- 4. If FKD fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, FKD's failure to comply is not a violation of this Order. FKD shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. FKD shall notify the Executive Director within seven days after FKD becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
- 5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated

showing of good cause. All requests for extensions by FKD shall be made in writing to the Executive Director. Extensions are not effective until FKD receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

- 6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to FKD if the Executive Director determines that FKD has not complied with one or more of the terms or conditions in this Order.
- 7. This Order shall terminate five years from its effective date or when FKD demonstrates to the satisfaction of the Executive Director that it has corrected all of the violations noted herein.
- 8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order is the date this decision was rendered, pursuant to Tex. Gov'T CODE § 2001.144(a)(3).

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

#### AFFIDAVIT OF ANNA M. COX

STATE OF TEXAS §

COUNTY OF TRAVIS §

"My name is Anna M. Cox. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of FKD Enterprises Inc. dba Lucky Seven Food Mart" (the "EDPRP") was filed with the Office of the Chief Clerk on July 9, 2007.

The EDPRP was mailed to FKD at its last known address on July 9, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unable to forward." The first class mail has not been returned.

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More than 20 days have elapsed since FKD received notice of the EDSARP or the EDTARP. FKD failed to file an answer to either the EDSARP or the EDTARP, failed to request a hearing, and failed to schedule a settlement conference."

Anna M. Cox, Attorney

Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this \_/2day of \_Septemb., 2008.

Margaret Jackson | Margaret Jackson

Margaret Jackson
Notary Public
State of Texas
My Commission Expires
OCTOBER 06, 2009

Notary Signature